## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
## BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re application of                                    Docket No: Q64971

Ludo GYS

Appln. No.: 09/891,264                                  Group Art Unit: 2152

Confirmation No.: 1632                                  Examiner: Dohm CHANKONG

Filed: June 27, 2001

For:    METHOD OF SERVICE PROVISION IN A COMMUNICATIONS NETWORK
        AND FURTHERMORE PROGRAM MODULES AND MEANS THEREFOR


**REQUEST FOR REHEARING UNDER 37 CFR 41.52**

**MAIL STOP APPEAL BRIEF - PATENTS**
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Further to the Decision mailed November 16, 2006, and in accordance with the

provisions of 37 C.F.R. § 41.52, Appellant requests rehearing in the above case. The specific

points believed to have been misapprehended or overlooked by the Board are discussed on the

following pages.

## POINTS MISAPREHENDED BY THE BOARD

Using claim 1 as an example, Claim 1 recites that a service server sends a first container to a service computer, with the container containing a service machine. The claim then recites that the service computer executes the service machine to manage the execution of a personal service for the communications terminal. The last paragraph of the claim describes the personal service as being provided by the execution of a service component which is also sent from the service server to the service computer in a container. Finally, the penultimate paragraph of the claim describes that the service computer (which receives the container(s) from the service server and executes the received service machine) provides a network lock which offers to the first service container a predefined interface to the communication network for the provision of the personal service.

The Board has agreed with the examiner's characterization of the claim language and Yates such that the policies of Yates correspond to the claimed service components and the SIBB of Yates correspond to the claimed service machine. The Board has agreed that the modules of Yates are blocks of executable code, but has adopted the position that a block of executable code can "contain" a SIBB. It is respectfully submitted that the Board has adopted an interpretation of the word "contain" which is broader than what is reasonable in light of the specification. A block of executable code may *include* a block of executable code, and in that sense may "contain" a block of executable code, if "contain" is read to encompass the concept of "include." But this is an unreasonably broad reading of the word "contain" when the word is used in combination with the word "container," as is the case in appealed claim 1. A pile of coins may

*include* four quarters, and the four quarters may be considered to be *contained* within the pile of coins. But that is only if the word "contain" is read to mean "include." The word "container" is not susceptible to the alternative meanings of "contain" and "include." The pile of coins would never be considered to constitute a container.

Similarly, a block of executable code would never be considered to be a "container." It is believed that the Board has incorrectly interchanged the meanings of "contain" and :container," treating a Yates module as a container simply because it can be said to "contain" a SIBB even though it cannot be said to contain a SIBB when the word contain is used in the same sense as is consistent with the word container.

The point of error can be seen at page 9 of the Decision where the Board quotes lines 5-7 and 10-13 of column 3 of Yates as describing that functionality of at least some of the modules provide service independent building blocks which are pieces of software incorporating data and functionality. The Board then concludes that this passage illustrates that a software module may encapsulate software building blocks. First of all, it is submitted that the Board has inadvertently allowed hindsight to color its view of Yates, in that the passage quoted by the Board could just as easily be read as stating that at least some of the software modules *are* service independent building blocks. The concept of "containing" a SIBB is not suggested.

Further, and more importantly, there is clearly no suggestion in the passage quoted by the Board of the concept of "encapsulate." It is simply not there, nor anywhere else in Yates. Thus, the conclusion of the Board is based on a "leap" that is simply not supported.

All of the appealed claims recite that the service component may be sent to the service computer either in the same container or a different container from that which is used to send the service machine to the service computer. The fact that the service component may be sent in the same container as the service machine is further intrinsic evidence that the word "contain" is used in the sense of "encapsulate" as opposed to simply including as part of.

For the above reasons, it is submitted that the Board has confused the broader range of meanings of "contain" with the narrower range of meanings associated with the word "container," and it is believed that when properly construed the claims are not taught by Yates.

Respectfully submitted,

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